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1957

February 20

Adelard H. Gato, Labor Commissioner
Department of Labor
Star Building
Concord, New Hampshire

Dear Sir:

Your letter of February 13, 1957, requests the opinion of this office on two questions:

1. Whether the minimum wage law applies to high school students who observe and assist in work in private facilities as a part of their school training during school hours and under school supervision.

2. The same facts as in (1) except that the students remain after school hours and perform their work.

The answer to question (1) is in the negative. If they are working gratuitously they do not fall within the classification of an employee as stated in the opinion of this office to you on January 31, 1957. It is further assumed that they are engaged in this work to round out the practical side of their formal education.

The answer to question (2) is in the affirmative, assuming there is money or its equivalent being paid by the employer and the student is doing the work beyond the scope of his studies as required by the school. It is further assumed he is required to have an employment certificate from the superintendent of the school, as provided in RSA 276:2, 7 and 10.

Although RSA 275:4, Para. II, states that an employee — "shall mean and include every person who may be permitted, required or directed by any employer, in consideration of direct or indirect gain or profit, to engage in any employment", the statutory construction of the word "gain" used in this context would appear to mean monetary enrichment.

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Adelard E. Cote, Labor Commissioner

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It could well be said that there is a definite gain to the student who is participating in the curriculum prescribed by the school, but conversely, a gain is derived in nearly any given situation. It is apparent that the public policy of educating youngsters would be seriously handicapped in each instance where there is practical education granted through the courtesy of private enterprise at the instigation of the public schools if private enterprise is required to treat an observing student as an employee. It is not believed that this was the intent of the legislature in defining "employee" under the protective legislation of chapter 275, section 4.

Sincerely yours,

William J. Deachman
Assistant Attorney General

WJD/T